

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEPHEN M DUNN**  
Claimant

**JIM JAWK TRUCK-TRAILERS INC**  
Employer

**APPEAL 22A-UI-01092-ED-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 10/17/21**  
**Claimant: Appellant (2R)**

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Iowa Code § 96.4(3) – Able and Available for Work  
**STATEMENT OF THE CASE:**

On December 8, 2021, Stephen Dunn (claimant) appealed an unemployment insurance decision dated December 1, 2021, reference 04, that concluded he was not able and available for work effective December 1, 2021 due to injury. A telephone hearing was held on February 2, 2022. The claimant participated personally. No exhibits were offered or admitted. The administrative law judge took official notice of the administrative record, specifically the payment history.

**ISSUE:**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**FINDINGS OF FACT:**

Claimant was hired August 3, 1992. Claimant worked as a trailer mechanic on a full time basis. Claimant's immediate supervisor was Brad Robinson. Claimant is no longer employed with this employer. His last day physically worked was January 15, 2020 when claimant sustained a work-related injury. On January 15, 2020, claimant tore his rotator cuff and two ligaments at work. Claimant was hanging a new door on a trailer with the second shift foreman. Claimant lifted wrong and dropped his side of the door. Claimant's doctor removed him from work. Claimant was released to go back to work with restrictions on January 18, 2020. The restriction consisted of no use of his left arm. The employer would not allow claimant to return to work with the restrictions imposed at the time. Claimant was discharged on October 28, 2020. On October 28, 2021 claimant's doctor released him back to work with no restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as the medical condition was work-related and the treating physician has released the claimant to return to work, he has established his ability to work.

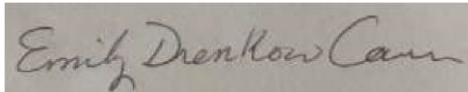
Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

**DECISION:**

The December 1, 2021, (reference 04) unemployment insurance decision is reversed. The claimant is able to work and available for work effective October 17, 2021. Benefits are allowed, provided he is otherwise eligible.

**REMAND:**

The issue of claimant's separation from employment be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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Emily Drenkow Carr  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

February 22d, 2022  
Decision Dated and Mailed

ed/rs

*Note to Claimant:* This decision determines you have been overpaid PUA under the CARES Act. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.